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THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI OH 45224

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OFFICE OF PETITIONS

In re Application of
Payet
Application No. 10/071,583
Filed: February 7, 2002
For: TEXTILE FINISHING PROCESS
Attorney Docket No.: 7919RX*D2
Pub. No.: US 2002/0138917 A1
Pub. Date: October 3, 2002

DECISION DISMISSING PETITION

This is in response to a request for a corrected patent application publication under 37 CFR 1.221(b) and a petition under 37 CFR 1.183 to suspend the rule for correction of patent application publication under 37 CFR 1.221(b), which were filed on January 14, 2003.

The instant request is that the application be republished deleting the various patent assignment-related documents, which are not part of the patent application and are included as pages 16-29 of the published patent application. Petitioner argues that the time period for requesting a corrected publication under 37 CFR 1.221(b) should be extended. Petitioner argues that applicant observed that the publication improperly included the extra pages on December 18, 2002, when the images of the publication were viewed and petitioner notes that the extra pages are not apparent in the non-image version of the document.

The petition is **DISMISSED**.

On February 7, 2002, applicant filed the instant application with an appendix including the various assignment-related documents, which were published as pages 16-29 of the patent application publication.

37 CFR 1.221(b) indicates that the Office will grant a request for a corrected or revised publication "only when the Office makes a material mistake which is apparent from Office records" and that the request "must be filed within two months from the date of patent application publication". A material mistake must affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication, or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent.¹

The application was correctly published under current Office procedure, as appendices are included in patent application publications. The appendices are not viewable in the text

¹Changes to Implement Eighteen-Month Publication of Patent Applications, 65 FR 57023, 57038 (Sept. 20, 2000), 1239 Off. Gaz. Pat. Office 63, 75 (Oct. 10, 2000) (final rule).

version of the document and are only viewable in the image version document, which is the Official version, as the appendices are not converted to text and instead are treated as drawings. Additionally, the inclusion of assignment information would not be a material error, as the information would not affect the public's ability to appreciate the technical disclosure of the patent application publication, determine the scope of the publication or determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent.

Suspension of the rules under 37 C.F.R. § 1.183 may be granted only "[i]n an extraordinary situation, when justice requires" The rule places the determination of whether a situation is "extraordinary," and whether justice requires waiver, within the discretion of the Commissioner of Patents and Trademarks. *Nitto Chem. Indus. Co. v. Comer*, 39 USPQ2d 1778, 1780 n.4 (D.D.C. 1994). The facts presented on the record do not establish an extraordinary situation within the meaning of § 1.183. Petitioner has not established any special circumstances or equities that would require suspension of the rules in the interests of justice.

There is no adequate showing that the Office published the application incorrectly or that petitioner was prevented from filing his request within the time period. Equitable powers should not be invoked to excuse the performance of a condition by a party that has not acted with reasonable due care and diligence. *United States v. Lockheed Petroleum Servs.*, 709 F.2d 1472, 1475 (Fed. Cir. 1983).

The applicant is advised that a "request for republication of an application previously published" may be filed under 37 CFR 1.221(a). Such a request for republication "must include a copy of the application in compliance with the Office's electronic filing system requirements and be accompanied by the publication fee set forth in § 1.18(d) and the processing fee set forth in § 1.17(i)." If the request for republication does not comply with the electronic filing system requirements, the republication will not take place and the publication fee set forth in § 1.18(d) will be refunded. The processing fee will be retained.

The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition. See 35 U.S.C. § 41(a)(7). Accordingly, as authorized, the required \$130.00 petition fee will be charged to Deposit Account No. 04-1133.

Any request for republication under 37 CFR 1.221(a), should be submitted via the EFS system and questions or request for reconsideration of this decision, should be addressed as follows:

By mail to: Box PGPUB
Commissioner for Patents
Washington DC 20231

By facsimile: 703-305-8568

The application is being forwarded to Technology Center 1700 to await further examination in due course.

Telephone inquiries regarding this communication should be directed to Mark Polutta at (703)308-8122.

Karin Ferriter

Karin Ferriter, Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy